IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3847 OF 2007
IN
SUIT NO.1133 OF 1978

Lachhmandas Chhugomal Khatri ...Plaintiff

vs.

M/s.Maharashtra Cloth Stores & Ors. ...Defendants

Ms Mamta Sadh i/b M/s.Thakordas & Madgaonkar for the applicant in the notice of motion and for Plaintiff in the suit.

CORAM: A.S.OKA,J.
DATE : OCTOBER 22,2007

P.C.:

1. Heard learned counsel for the plaintiff in support of the notice of motion.

2. The prayer in this notice of motion is for setting aside the orders dated 6th August 2007 and 11th September 2007 passed in the notice of motion No.1635 of 2007. The learned counsel for the plaintiff states that notice of this notice of motion is not served to the defendants.

3. The notice of motion no.1635 of 2007 was taken out for restoration of the suit. On 6th August 2007 an order was passed by this court directing the plaintiff to complete the service within a period of four weeks from that date. On 11th September 2007, further order was passed in the notice of

motion no.1635 of 2007 recording therein that conditional order dated 6th August 2007 was not complied with and hence the said notice of motion stands dismissed for non prosecution.

4. It is pointed out in paragraph 13 of the Affidavit in support of this notice of motion that in fact on 4th September 2007, a Chamber Order was obtained by the plaintiff for effecting the service of notice of notice of motion no.1635 of 2007 by substituted service. In view of the said statement, though this notice of motion is not served to the defendant, a case is made out for restoration of the notice of motion no.1635 of 2007 as it is pointed that appropriate steps were taken by the plaintiff for effecting service of notice of the notice of motion No.1635 of 2007.

5. Hence, notice of motion is made absolute in terms of prayer clause (a).

6. The notice of motion no.1635 of 2007 shall be set down for hearing on 14th December 2007. In the meanwhile, service of the said notice of motion shall be completed by the plaintiffs.

JUDGE